IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 798 OF 2007

M/s. Mapro Industries Limited ...Petitioner
V/s.
Balkrishna S. Gamre & Anr. ...Respondents

Mr.R.S. Pai i/b. M/s.Sanjay Udeshi & Co. for the Petitioner.
Smt.Gayatri Singh for Respondent No.1.

CORAM : V.M. KANADE, J.

DATED : JUNE 26, 2007

P.C. :-

1. By this petition, the petitioner which is a company engaged in the business of manufacture and sale of industrial gases having its factory at Taloja, Raigad District, is challenging the Award dated 13.11.2006 passed by the 5th Labour Court, Mumbai, in Reference (IDA) No.39/99 whereby the Presiding Officer, Fifth Labour Court, Mumbai, was pleased to allow the reference and the petitioner herein was directed to reinstate the respondent with continuity of service and full backwages with effect from 19.12.97. Respondent no.1 was employed with the petitioner as a Peon in the year 1977 in its Bombay office.

2. On 18.12.97, the first respondent reported to duty at about 12 noon and when he was asked by the President of company why he was late, he was told that the respondent had gone to Dadar for collection of certain material for the company on the instructions of other employees. It is the case of the petitioner that thereafter, he stopped attending the work and made a complaint to the Assistant Labour Commissioner, Mumbai against the petitioner stating therein that he was not allowed to report for work by the petitioner. In the reconciliation proceedings, the company informed the officer that the services of the respondent no.1 was not terminated and the respondent had abandoned his work and had remained absent. Since reconciliation proceedings failed, the matter was called for reference before the Labour Court. The respondent filed a Statement of Claim and the petitioner filed his written statement. After both the parties led evidence, the Labour Court passed order in favour of the respondent. Being aggrieved by the said order, the petitioner has preferred this petition under Article 226 of the Constitution of India.

3. Shri Pai, learned Counsel appearing on behalf of the petitioner submitted that the Labour Court had erred in coming to the conclusion that the petitioner had not allowed the respondent to resume his duties. He submitted that right from the inception, the petitioner company had never prevented the respondent from raising any grievance and that letters had been sent by the petitioner asking the respondent to report to work. He submitted that the Labour Court had not taken into consideration this documentary evidence on record and had erred, therefore, in coming to the conclusion that the petitioner had refused to allow the respondent to report for duties. He further submitted that the Labour Court also had erred in drawing adverse inference against the company for not producing the register and the record. He submitted that it was essential that the party should first call for the record and for that purpose it was essential that the party concerned to rely on that record or document and only in this circumstance, if the record is not produced, adverse inference can be drawn. He relied on the judgment of the Apex Court in the case of **Mahendra L. Jain and**

others V/s. Indore Development Authority and others reported in (2005) 1 SCC 639. Shri Pai, learned Counsel thereafter submitted that the burden of establishing that the respondent was unable to get the work was purely on the workman and not on the company. He submitted that the Labour Court had erred in shifting the burden on the company. He submitted that no evidence had been adduced by the workman to prove that he had taken steps for resuming work after he was allegedly terminated and that inspite of the best efforts, he was to procure work. In support of the said submission, he relied on the judgment of the Apex Court in the case of **Kendriya Vidyalaya Sangathan and Another V/s. S.C. Sharma reported in 2005-II-LLJ Page 153.** He submitted that the Labour Court had erred in directing the petitioner to reinstate the workman with full backwages. He invited my attention to the written statement which was filed by the petitioner in which it was specifically averred that the petitioner had not terminated the services of the respondent and that at that stage also, offer was made by the petitioner asking the respondent to join or resume his duties. He

submitted that inspite of offer being made, the respondent had not resumed his work.

4. It is not possible to accept the submission made by the learned Counsel for the petitioner. I have perused the Award as also the evidence and the Statement of Claim and the written statement filed by the petitioner. The Labour Court has taken into consideration the material on record as also the evidence which was brought on record by the parties and has thereafter by passing a reasoned order, accepted the contention of the workman that he was not allowed to resume duties and observed that respondent no.1 was working for 28 years and it was not probable that merely upon being asked an explanation by the President of the company, the respondent would on his own without any reason refrain from joining his duties. It has to be noted here that no Show Cause Notice has been issued by the petitioner company to the respondent no.1. as to why he had not remained present or why he had remained absent from any particular date, no enquiry has been held by the company on account of continued absence by

the respondent no.1. It is pertinent to note the chronology of events in this case. According to the respondent no.1 he was questioned by the President of the company on 18.12.97 when he came late at 12 noon and it is his case that he was asked to resign immediately and he was also threatened that if he did not tender resignation, he will have to face dire consequences. He refused to do so and he was physically thrown out of the President's cabin. It is his case that next day also when he reported for duty, he was not allowed to enter the office and was made to sit outside the office door for the whole day. The respondent no.1 thereafter wrote two letters to the company dated 20.12.97 and 22.12.97 requesting them to allow him to report for duty, however, these letters were not accepted and therefore, these letters were sent by Speed Post. When a positive response was not received, he sought the help of the Hon'ble Minister and wrote a letter to the employer asking him to allow the respondent no.1 to report for duty. This letter has been brought on record by the petitioner himself during the course of the proceedings. Thereafter, as an after thought a letter dated 27.12.97

was issued to the employee, however, he gave reply to the said letter and thereafter, a copy of the said letter was addressed to the Hon'ble Labour Minister. Thereafter, again on 15.1.98 and 18.1.98, two letters were sent to the employer. Even in the conciliation proceedings, the accountant of the petitioner had reported that the employer was ready to take the workman. However, no work as actually given to respondent no.1. Thereafter, failure report was recorded on 5.1.99. The Labour Court has taken into consideration the evidence led by the workman and the evidence of Shri Somani and after taking into consideration the admission given by Shri Somani in his cross-examination, has not accepted the case of the petitioner that the respondent no.1 had not reported for duties. The Labour Court has observed that it is not possible to believe that the person who was working for 28 years prior to the said incident from 18.12.97 did not report for duty merely because he was asked to be punctual and regular in his attendance. The view taken by the Labour Court, therefore, is a plausible view. It is not possible to substitute this view which is taken

by the Labour Court while exercising writ jurisdiction under Article 226 of the Constitution of India.

5. So far as the submission of Shri Pai regarding the payment of backwages is concerned, it is a well settled position in law that there is a strait-jacket formula for the purpose of arriving at a decision regarding the question of payment of backwages and that the said question had to be decided in the facts and circumstances of each case. The Labour Court has considered this aspect in detail and has observed that the respondent no.1 was not allowed to join his duties. In para 15 of the said judgment, the Labour Court has taken into consideration the correspondence as well as admissions given in the evidence and has held that the respondent no.1 had reported for duty but he was not allowed to report on 19.12.97 as per Exhibit C-4/6, 20.12.97 as per Exhibit C-4/5 and C-4/6, 22.12.97 as per Exhibit C-4/6 and C-4/9, 23 and 24.12.97 as per Exhibit C-4/9, 27 and 28.12.97, 3.1.98, 8.1.98, 13.1.98. It is not correct to say that the Labour Court had put the burden of establishing that the respondent had not

secured alternate work, on the company. The Labour Court in paras 16, 17 and 18 has taken into consideration the evidence which has been led by the workmen and the efforts made by the company by engaging detective agency for the purpose of finding out whether the workman was gainfully employed or not. From the perusal of the aforesaid paragraphs of the said judgment, it is evident that the Labour Court has applied its mind and has thereafter, come to the conclusion that the respondent was unable to obtain alternate employment after he was terminated by the petitioner. The Labour Court, therefore, in my view, has rightly come to the conclusion that the services of the respondent no.1 were terminated on account of victimisation, firstly he had filed the complaint about his service conditions to the Labour Commissioner and the Minister of the Government of Maharashtra. The ratio of the judgment, therefore, in the case of **Kendriya Vidyalaya Sangathan (supra)** will not apply to the facts of the present case. In the present case, specific pleadings have been made by the workman in the statement of claim. There is ample documentary evidence

on record to arrive at a conclusion that respondent no.1 was not allowed to resume work. In the face of this blatant conduct of the petitioner company in flouting the provisions of the Act and Rules discloses that the company had taken a decision to face the consequences of a litigation before the Labour Court. In such cases when the proceedings end in the favour of the workman, there is no reason why he should not be compensated by payment of backwages. Under the circumstances, there is no reason to interfere with the order passed by the Labour Court.

. The petition, therefore, is dismissed in limine.

(V.M. KANADE, J.)